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of Congress (Van Brocklin v. Tennessee, 117 U.S. 151; 29 L. Ed. 845; 6 S. Ct. 670). No land shall be purchased on account of the United States, except under a law authorizing such purchase (R. S. 3736; 41 U.S.C. 14). No real estate not in Federal ownership shall be acquired by a military department, except as such acquisition is or shall be expressly authorized by law (section 501(b), Act July 27, 1954; Pub. L. 534, 83d Congress; 68 Stat. 560).

§ 552.33 Estates and methods of acquisition.

(a) Title to non-Government-owned real estate will be by purchase, condemnation, donation (when the authorization act specifies donation), and exchange (when the authorization act specifies exchange).

(b) Easements in non-Government-owned real estate are the same as in paragraph (a) of this section.

(c) Licenses in non-Government-owned real estate are generally by donation, although a nonrevocable license might be acquired by purchase.

(d) Leaseholds in non-Government-owned real estate will be by negotiation or condemnation. Leaseholds may give the Government exclusive use or may give the Government co-use with the owner for specific purposes.

(e) Jurisdiction over Government-owned real estate will be by transfer, reassignment, withdrawal, and reservation.

(f) Permits to use Government-owned real estate will be by instrument issued by another Government department or agency. Although in the nature of a license (may be revocable or nonrevocable), the instrument is designated as a "permit", since it relates to Government-owned real estate, to distinguish it from a "license" relating to non-Government-owned real estate.

(g) Recapture of use of former Government-owned real estate which was disposed of subject to a "National Security Clause," a "National Emergency Clause," or a similar provision will be by letter from the Chief of Engineers to the owner of the property, based upon a directive from the Secretary of the Army or his designee.

(h) Revestment of title to former Government-owned real estate which

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was disposed of subject to a reverter provision, such as a "National Defense Purpose Clause" will be by letter to the owner by the official of the department designated in the conveyance by the Government.

(i) Procurement of options on real estate which is "suitable and likely to be required" in connection with a military public works project, prior to express authorization by law for the acquisition of said real estate will be by negotiation.

(j) Extinguishment of third party interests in lands owned or controlled by the United States, such as outstanding oil, gas, and other mineral rights; grazing rights; timber rights; water rights; and easements for rights-of-way for highways, railroads, power lines, communication lines, water lines, and sewer lines will be the same as prescribed in paragraph (a) of this section. Payment for extinguishment of grazing rights or licenses on public domain or other property owned by or under the control of the United States is made pursuant to Act July 9, 1942; 56 Stat. 654; as amended by Act May 28, 1948; 62 Stat. 277; and as further amended by Act October 29, 1949; 63 Stat. 996 (43 U.S.C. 315q and r).

§ 552.34 Policies relative to new acquisition.

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis,

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the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Pub. L. 85-337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environ-

mental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction of facilities for Reserve Components of the Armed Forces.

(g) *Army Reserve training sites.* In general, title to lands will not be acquired for exclusive use as training sites. Training sites will be acquired by one of the following means in the order listed:

(1) Use of lands under the control of the Department of the Army regardless of the agency maintaining jurisdiction, to include class II and industrial installations and other Reserve Component facilities, see title 10 U.S.C. 2331 and 2237.

(2) Use of reservoir lands of Civil Works Projects. By informal agreement with the Resident Engineer or Manager (when training activities do not involve exclusive use, construction, or destruction of vegetation) or by permit from the District Engineer (for other activities when such activities are compatible with the operation and maintenance of the project and will not endanger the use by the general public of public access areas).

(3) Use of lands, by permit or otherwise, under the control of the other military departments.

(4) Use of lands by permit of other Government-owned land, including the public domain.

(5) Use by license or nominal rental lease of local, county, or State-owned public lands.

(6) Use of privately owned land by short-term co-use lease under the authority granted in § 552.39.

(7) Use of non-Government-owned land by lease.

(8) Acquisition of lands excess to the requirements of the other military departments.

(9) Acquisition of lands excess to the requirements of Federal agencies other than the military departments.

(10) Acquisition of the non-Government-owned land.

(11) As a rule of thumb, lands will not be acquired for training from any source when the value of the land exceeds that of rural farm land in the area.

(h) *Public notice and release of information relative to proposed real estate acquisitions.* It is the policy of the Department of the Army to give notice to the public and to release information to the public as early as possible (at the site selection stage) and as completely as possible, consistent with existing regulations. Even though opposition may develop in some cases because of early release of information as to proposed acquisitions, application of this policy should more often result in favorable public relations, general public support of proposed acquisitions, and material assistance in the selection of sites which will fulfill the military requirement and still have the least impact on the civilian economy. This policy will permit consideration of public preferences in the establishment of military facilities. Section 302 of the Act of July 14, 1960; Pub. L. 86-645, which is applicable to military as well as water resources public works projects, provides for dissemination of information on large new installations.

(1) *Restrictions relating to Agency Budget Estimates and Presidential Budget Recommendations.* Bureau of the Budget Circular No. A-10, as revised, places restrictions on disclosure of Agency Budget Estimates and Presidential Budget Recommendations. It provides that budget recommendations and estimates are administratively confidential until made public through formal transmittal of the budget to Congress. Public notice and release of information relative to proposed real property acquisitions will, therefore, exclude

any information as to whether the proposed acquisition has been included in a pending budget not yet formally transmitted to the Congress or is to be included in a future budget. Public notice and release of information will be on the basis of "advance planning."

(2) *General application and exceptions.* Non-Government-owned real property generally is acquired by negotiations, based on its fair market value as established by Government appraisal and regardless of who the owner is, how much the owner paid for the property, and how long the owner has owned the property. For this reason, public notice and release of information should not tend normally to increase the value of the land involved or create speculation therein. Experience has proved that interest of the Government in specific real property normally tends to discourage trafficking therein. Though normally the release of information should not result in subsequent disadvantage to the Government, information will not be released in any specific case where it might have that result. AR 345-15 applies to the acquisition of real property only in those instances in which the release of advance information on proposed plans might provide undue discriminatory advantage to private or personal interests.

(3) *Application to Army Reserve facilities.* During the preliminary site selection stage for Army Reserve facilities, the Army commander's representative will contact responsible local public officials to explain the nature of the proposed facility and to obtain their concurrence in the Army's acquisition and use of the site tentatively selected. Such a statement, including the names and titles of officials contacted, will be furnished by the Army commander to the District Engineer for inclusion in the Real Estate Planning Report. Release of information on Army Reserve centers will be made only by an authorized representative of the Army commander.

(i) *Use of unappropriated and nonnavigable water.* It is the policy of the Department of the Army to utilize unappropriated and nonnavigable water upon or under lands under jurisdiction in such a manner as is consonant with

the purposes of water laws which have been enacted by the several States.

(j) *Permanent construction.* If permanent construction, defined as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance, is to be constructed by the Government, the Government must either hold or acquire title to the land (inclusive of all mineral rights and improvements) or a permanent easement interest, with the following exceptions:

(1) *Right of reuse by exercise of National Security Clause.* Property, including land or buildings, over which the Government currently holds the right of reuse by exercise of the National Security Clause.

(2) *Right of reuse by exercise of National Emergency Use Provision.* Property, including land or buildings, over which the Government holds the right of reuse by exercise of a National Emergency Use Provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

(3) *Rights-of-way.* Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of \$1 per term or per annum.

(4) *Airbase.* Property required for airbases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

(ii) A rental consideration of \$1 per term or per annum.

(iii) Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific purpose.

(5) *Reserve Components facilities.* Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraphs (j)(4) (i), (ii), (iii), and (iv) of this section. When possible the insertion in a lease of provision restricting the use of the land to a specific purpose will be avoided; use of a term as "Government purposes" should be employed whenever possible.

(6) *Air defense sites.* Property required for air defense sites provided such property can be acquired by lease containing provisions detailed in paragraphs (j)(4) (i), (ii), and (iv) of this section and in addition thereto a right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) *Exception by Assistant Secretary of Defense (Installations and Logistics).* Where leases (for airbases, facilities for Reserve Components of the Armed Forces, or air defense sites) can be obtained containing some but not all of the above-listed provisions or where leases (for all other types of installations upon which permanent construction is to be placed by the Government) can be obtained containing similar provisions and it is considered to be to the best interest of the Government to acquire a lesser interest than fee title, it will be necessary to obtain approval from the Assistant Secretary of Defense (Installations and Logistics) prior to placing permanent construction thereon.

(8) *Construction projects not in excess of \$25,000.* Construction projects estimated to cost not in excess of \$25,000 will not be considered as permanent construction for purposes of applying the above policy.

(9) *Industrial installations.* See paragraph (l) of this section.

(k) *No permanent construction.* Where temporary construction or no construction is to be placed by the Government, acquisition of a lesser interest

(leasehold, easement, license, as appropriate) will generally be considered to be in the best interest of the Government, with the following exceptions:

(1) *Cost of construction.* Where any proposed temporary construction to be placed by the Government has an estimated cost equal to or in excess of the current market value of the property.

(2) *Rent plus restoration.* Where the calculated period of required use is of sufficient duration that the sum expended for rentals over this period plus restoration, if required, would exceed 50 percent of the current market value of the property. (Apply calculated period of required use or 20 years, whichever is less.)

(3) *Easement costing 75 percent of fee value.* Where the cost of acquiring an easement right exceeds 75 percent of the current fair market value of the property.

(1) *Industrial installations—(1) Definitions.* Industrial facilities as used herein are defined as plants, buildings, utilities, improvements, and additions and appurtenances thereto used for military production and related purposes, including testing and development. Nonseverable industrial facilities as used herein are defined as industrial facilities located on other than Government-owned land, and which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

(2) *Policy.* Industrial facilities will be located on land owned by the Government or in which the Government has a permanent, disposable interest. Nonseverable industrial facilities will be located on land in which the Government has a disposable interest equal in term to the estimated useful life of the facilities, unless the Head of a Procuring Activity, with consideration to any nonrecoverable costs involved, determines that such location is not feasible. If the Head of a Procuring Activity makes this determination, he may authorize the location of such facilities on other land, provided:

(i) The estimated useful life of the facilities will not extend beyond the contract under which the facilities are installed or the completion of the work for which the facilities are provided; or

(ii) The contractor agrees to purchase the facilities upon the end of the facilities contract at the acquisition cost of the facilities, less depreciation; or

(iii) The Secretary approves other provisions as being in the interest of national defense.

(iv) If location on land in which the Government does not have a disposable interest, as above set out, is authorized under paragraphs (1)(2)(i), (ii), or (iii) of this section, the Government must have the right to abandon the facilities in place, with no obligation to restore or rehabilitate the facilities or the premises on which they are located.

(m) *Commercial and industrial type facilities—(1) Policy.* Privately owned or Government-owned and privately operated commercial and industrial type facilities will be used to the greatest extent practicable, recognizing the basic military necessity for integrated, self-sustaining units responsible to command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8,

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1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

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§ 552.35 Rights-of-entry for survey and exploration.

(a) *Voluntary.* Where it is necessary to enter upon non-Government-owned real estate during site selection, particularly for the purpose of conducting topographic surveys and test borings, the appropriate division or district engineer will negotiate rights-of-entry for survey and exploration. The instrument is in the nature of a license which does not convey an interest in land but precludes the entry from being a trespass. Since the entry is for a limited purpose and for a relatively short period of time, the landowner is not offered rental for the privileges requested. Where the landowner insists upon payment for the privileges requested, district engineers are authorized to negotiate short-term co-use leases, within the limits of existing regulations.

(b) *Involuntary.* Where rights-of-entry for survey and exploration or short-term co-use leases cannot be negotiated, the right-of-entry may be obtained through the institution of proceedings for the condemnation of a short-term co-use leasehold interest. This action is taken only where it can be shown that the entry is imperative and that it is impossible to negotiate a voluntary right-of-entry or short-term co-use lease.

§ 552.36 Rights-of-entry for construction.

(a) *When authorized.* Rights-of-entry for construction will be obtained by the district engineer only after a real estate directive or authorization to lease has been issued and then only when the construction schedule does not allow sufficient time to complete negotiations for an option to purchase or for a lease, as appropriate.

(b) *Involuntary.* Where a right-of-entry for construction cannot be negotiated, under the circumstances set forth in paragraph (a) of this section, a right-of-entry will be obtained through the institution of proceedings for the condemnation of fee title, an easement interest, or a leasehold interest, as appropriate.

§ 552.37 Acquisition by Chief of Engineers.

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

(b) *Scope of responsibility.* This authority is exercised by the Chief of Engineers, acting for the Secretary of the Army, in the acquisition of all real estate and interests therein for the use of the Department of the Army in continental United States, Territories, possessions, and the Commonwealth of Puerto Rico.

(c) *Delegated authority.* The Chief of Engineers or his duly authorized representative has authority to approve, for the Secretary of the Army:

(1) Fee, easement, and license acquisitions which do not exceed \$5,000 for any one parcel and which constitute small tracts of additional land needed in connection with projects for which final Department of the Army, Department of Defense, and/or Congressional approval has been obtained, or which constitute rights-of-way for roads, railroads, and utility lines necessary to the construction, maintenance, and operation of an approved project.

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed \$25,000 and the acquisition is not controversial,